

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 2:21-CR-01-2
(Judge KleeH)

YANKIER GASTON GARCIA,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 68],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On March 4, 2021, the Defendant, Yankier Gaston Garcia ("Garcia"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count One of the Indictment, without a written plea agreement. Count One charges him with Conspiracy to Commit Offense Against the United States, in violation of Title 18, United States Code, Section 371. Garcia stated that he understood that the magistrate judge is not a United States District Judge, and Garcia consented to pleading before the magistrate judge. This Court referred Garcia's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

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Based upon Garcia's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Garcia was competent to enter a plea, that the plea was freely and voluntarily given, that Garcia was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 68] finding a factual basis for the plea and recommending that this Court accept Garcia's plea of guilty to Count One of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Garcia nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 68], provisionally **ACCEPTS** Garcia's guilty plea, and **ADJUDGES** him **GUILTY** of the crime charged in Count One of the Indictment.

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Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea until it has received and reviewed the presentence investigation report prepared in this matter.

On March 9, 2021, Defendant filed his Motion for Expedited Sentencing [Dkt. No. 69]. Defendant states that he waives a full presentence report and that the United States does not object to relief sought. For reasons stated therein, the Court **GRANTS** the motion [Dkt. No. 69] and **ORDERS** the following:

1. The Probation Officer shall prepare a modified presentence investigation report for the Court;

2. The Government and Garcia shall each provide their narrative descriptions of the offense to the Probation Officer by **April 12, 2021;**

3. The modified presentence investigation report shall be disclosed to Garcia, his counsel, and the Government on or before **April 27, 2021;** however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the modified presentence investigation report on or before **May 4, 2021;**

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5. The Office of Probation shall submit the modified presentence investigation report with addendum to the Court on or before **May 10, 2021**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **May 4, 2021**.

The magistrate judge remanded Defendant to the custody of the United States Marshals Service.

The Court will conduct the **Sentencing Hearing** for Garcia on **May 13, 2021**, at **2:30 p.m.**, at the **Elkins, West Virginia** point of holding court. U.S. Federal Certified Court Interpreter and Translator, Johnnie H. Benningfield, will be present. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

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The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies and to U.S. Federal Certified Court Interpreter and Translator, Johnnie H. Benningfield, by email at jb@itg.us.com.

DATED: April 5, 2021.

/s/ Thomas S. KleeH
THOMAS S. KLEE H
UNITED STATES DISTRICT JUDGE